IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15864 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHMEDABAD MUNICIPAL TRANSPORT SERVICE - Petitioner(s)

Versus

FULCHAND DUKHANTIRAM C/O.AMTS KARMACHARI SANGH - Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner(s) : 1,
RULE NOT RECD BACK for Respondent(s) : 1,
MR VM DHOTRE for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 16/11/2005

ORAL JUDGMENT

1.This petition is directed against the award passed by the Labour Court, Ahmedabad, in Reference (LCA) No. 1023/1992 whereby the Labour Court directed the

petitioner to reinstate the respondent on his original post with continuity of service with full backwages.

2.The short facts of the case are as under:

2.1The respondent was working as a Driver on daily wage basis with the Ahmedabad Municipal Transport Service w.e.f. 18.10.74.

2.2On 24.01.83, he submitted a medical certificate wherein it was mentioned that he has lost his left hand while he was working in his farm during leave period and he was unfit to serve as Driver. The respondent was thereafter, given all the monetary benefits and discontinued from service.

2.3On his request, he was provided work as an Asst. Sweeper w.e.f. 04.03.83 on contractual basis. A resolution was passed by the Transport Committee appointing the respondent on contractual basis for a period of one year w.e.f 01.01.91. In absence of any other resolution and in view of the contractual appointment the respondent was not provided work thereafter. The respondent, therefore, approached the Labour Court, Ahmedabad which passed the above order.

3.Learned counsel for the petitioner submitted that the Labour Court committed an error in reinstating the

petitioner and granting backwages. He submitted that the respondent was paid all the benefits available to him on his termination and that there are no rules and provisions for the re-categorisation but the request of the respondent was considered sympathetically and he was given contractual appointment. He further submitted that full backwages for more than 13 years would be a monetary burden to the Public Exchequer.

4.While admitting this matter on 25.04.2005, this court has granted stay as far as backwages is concerned but no stay was granted against reinstatement. In that view of the matter, the respondent has already been reinstated. The Labour Court has considered the evidence on record in detail and has come to the conclusion that the respondent workman is required to be reinstated. I am in complete agreement with the reasonings adopted and the findings arrived at by the Labour Court. Therefore, in my opinion, the order of reinstatement is not required to be interfered.

5.However, from the award it appears that the Labour Court has granted backwages without giving any cogent reasons. Backwages were granted merely on assumption without any concrete finding. The law on the subject is

well settled. In the case of Ram Ashrey Singh Vs. Ram Bux Singh, reported in (2003) II LLJ 176, it is held that the workman had no automatic entitlement to back wages since it is discretionary and has to be dealt with in accordance with facts and circumstances of each case. In the case of General Manager, Haryana Roadways Vs. Rudhan Singh, reported in JT 2005(6) SC 137 (=2005 (5) SCC 591), after referring to various decisions on the said subject, the Apex Court held that order for payment of back wages should not be passed in mechanical manner, but a host of factors are to be taken into consideration before passing any such order. Paragraphs 10, 11 and 12 read as under:

> “10. In Smt. Saran Kumar Gaur and others V. State of Utter Pradesh and others, this Court observed that when work is not done remuneration is not to be paid and accordingly did not make any direction for award of past salary. In State of U.P. And Anr. V. Atal Behari Shastri and Anr, a termination order passed on 15.7.1970 terminating the services of a Licence Inspector was finally quashed by the High Court in a writ petition on 27.11.1991 and a direction was issued to pay the entire back salary from the date of termination till the date of his attaining superannuation. This Court, in absence of a clear finding that the employee was not gainfully employed during the relevant period, set aside the order of the High Court directing payment of entire back salary and substituted it by payment of a lump-sum amount of Rs.25,000/-. In Virender Kumar, General Manager, Northern Railways, New Delhi V. Avinash Chandra Chadha and others, there was a dispute regarding seniority and promotion to a higher post. This Court did not make any direction for payment of higher salary for the past period on the principle “no work no 'ay” as the respondents had actually not worked on the higher post to which

they were entitled to be promoted. In Surjit Ghosh V. Chairman and Managing Director, United Commercial Bank and others, the appellant (Assistant Manager in the Bank) was dismissed from service on 28.5.1985, but his appeal was allowed by this Court on 6.2.1995 as his dismissal order was found to be suffering from an inherent defect. His claim for arrears of salary for the past period came to about Rs.20 lacs but this Court observed that a huge amount cannot be paid to anyone for doing no work and accordingly directed that a compensation amount of Rs.50000/- be paid to him in lieu of his claim for arrears of salary. In Anil Kumar Gupta V. State of Bihar, the appellants were employed as daily wage employees in Water and Land Management Institute of the Irrigation Department of Government of Bihar and they were working on the posts of steno-typist, typists, machine operators and peons, etc. This Court allowed the appeal of the workmen and directed reinstatement but specifically held that they would not be entitled to any past salary. These authorities show that an order for payment of back wages should not be passed in a mechanical manner but host of factors are to be taken into consideration before passing any order for award of back wages.

11. In the case in hand the respondent had worked for a very short period with appellant, which was less than one year. Even during this period there were breaks in service and he had been given short term appointments on daily wage basis in different capacities. The respondent is not a technically trained person, but was working on a class IV post. According to the finding of the Industrial Tribunal-cum-Labour Court plenty of work of the same nature, which the respondent was doing, was available in the District of Rohtak. In such circumstances we are of the opinion that the respondent is not entitled to payment of any back wages.

12. The appeal is accordingly partly allowed and the award of the Industrial Tribunal-cum-Labour Court insofar as it directs reinstatement with continuity of service is upheld by the award regarding payment of 50% back wages is set aside.”

6.In the premises aforesaid, the award granting backwages is quashed and set aside. The award of reinstatement with continuity of service is confirmed. The order of the Labour Court is modified to the above extent. Rule is made absolute accordingly with no order as to costs.

(K.S. JHAVERI, J.)

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